

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA *ex rel.* )  
JEFFREY J. BIERMAN, )  
Plaintiffs, )  
v. ) Case No. 05-cv-10557  
ORTHOFIX INTERNATIONAL, N.V., )  
*et al.*, )  
Defendants. )

**MOTION TO DISMISS THE SECOND AMENDED COMPLAINT ON BEHALF OF  
DEFENDANTS DJO INCORPORATED AND REABLE THERAPEUTICS, INC.**

Defendants DJO Incorporated and ReAble Therapeutics, Inc. (collectively, the “DJO Defendants”), through undersigned counsel and pursuant to Fed. R. Civ. P. 12(b)(6), and 9(b), hereby move to dismiss the allegations of the Second Amended Complaint by Relator Bierman (the “SAC”). The allegations against the DJO Defendants should be dismissed because: (1) the SAC simply sets forth hypothetical theories of liability but fails to plead the key, central elements of False Claims Act allegations – an actual, false claim submitted by the DJO Defendants, and thus fails to plead allegations of fraud with the particularity required by Fed. R. Civ. P. 9(b); and (2) the SAC fails to state a claim upon which relief can be granted and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because it lacks factual averments – as distinguished from speculation and leaps of logic – to support its theories of fraudulent conduct by the DJO Defendants.

For the reasons more fully set forth in the accompanying Memorandum, as well as the arguments set forth in Defendants' Joint Memorandum, which are hereby incorporated by

reference, the DJO Defendants respectfully request that the Court dismiss with prejudice all allegations and claims in the SAC asserted against them.

**REQUEST FOR HEARING**

The DJO Defendants respectfully request a hearing on the issues raised in this Motion.

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 7.1, I hereby certify that counsel for the Defendants has conferred with Relator Bierman's counsel in a good faith attempt to resolve or narrow the issues presented by this Motion but could not reach any resolution.

Dated: August 17, 2010

Respectfully submitted,

*/s/ Andrew C. Bernasconi*  
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